

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 689 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JASHWANTLAL P JAPEE

Versus

STATE OF GUJARAT

Appearance:

MR JV JAPEE for Petitioner

Mr.M.A.Patel Addl. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/08/98

ORAL JUDGEMENT

1. Leave to amend so as to delete respondent No.3 is granted.

1. Heard Mr.J.V.Japee for the petitioner. Rule.

Mr.M.A.Patel Ld.APP waives service of rule on behalf of respondent Nos 1 & 2. By consent of learned advocates appearing for parties matter is taken for final hearing today.

2. The petitioner is the owner of a jeep bearing Reg.No.GRS 4830 which is registered with the respondent No.2. It is contended by the petitioner that some NC complaint in respect to said jeep is sent to respondent No.2. That the respondent No.2 has withheld the same and has failed to forward the same to the competent court as per due procedure prescribed under law. It is alleged by the petitioner that the respondent No.2 has been pressurising the petitioner to compound the offence and pay the penalty for the said memo.

3. Mr.J.V.Japee, Ld.advocate for the petitioner has contended that the respondent No.2 has no power or authority to withhold the said memo or to compel the petitioner to make any payment towards penalty for settlement with said NC memo. Hence, the action of the respondent No.2 is challenged in the present petition.

4. Mr.M.A.Patel, Ld.APP has placed reliance on the provisions of section 86(5) of the Motor Vehicles Act, 1988(hereinafter referred to as "the Act") and has contended that the respondent No.2 is empowered under the said provisions to claim certain amount towards breach of conditions of permission or any rules if committed by the petitioner, and thereby the petition is not maintainable because no action of the respondent No.2 is illegal and arbitrary as alleged.

5. On appreciation of facts and circumstances apparent from the material produced on record and in the context of provisions of section 86(5) of the Act, though it prima facie appears that the procedure followed by the respondent No.2 under section 86(5) does not amount to compounding of any offence., said provision does not permit the respondent No.2 to withhold any memo of NC complaint in respect to a vehicle without forwarding the same to the competent court. The provisions of said section of the Act suggests that the respondent No.2 either can proceed in any adjudication proceedings under section 86(5) of the Act or resort to criminal proceedings under section 192(A) or simultaneous prosecution of both, but in any case has no right, power or authority to withhold the memo without any reasonable cause. However, the respondent No.2 can proceed against the petitioner in case of breach of terms and conditions or violation of rules in accordance with the provisions

of law.

6. In view of the above stated discussion, in my opinion, the petition is required to be allowed and appropriate direction is required to be given to the respondent No.2 to forward the pending NC memo in respect to the competent court.

7. In view of the above stated discussion, the petition is allowed and the respondent No.2 is directed to forward the memo of NC complaint in respect to jeep bearing Reg.No.GRS 4830 to the competent court within three weeks from the date of receipt of certified copy of this judgment and also to consider the request of the petitioner for renewal of permit, if any, in respect of said vehicle in accordance with the provisions of law within same period. The respondent No.2 is at liberty to take appropriate action against the petitioner in respect to any breach of the terms and conditions or violation of any rules as prescribed under the provisions of law. Rule is made absolute accordingly. No costs.

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